REMARKS

Claims 1-3, 5-9, 16, 17 and 19-35 are pending in the subject application; claims 1-3, 5-9, 16, 17 and 19-33 have been examined: claims 1-3 and 5-9 are allowed; claims 16, 17, 19-22 and 24-33 stand rejected; and claim 23 is indicated as containing allowable subject matter. By the above amendments, new claims 34 and 35 have been added. Favorable reconsideration of the application and allowance of all of the pending claims are respectfully requested in view of the above amendments and the following remarks.

Applicant thanks the Examiner for indicating the allowance of claim 1-3 and 5-9 and the allowability of the subject matter of claim 23.

Claims 24-29 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,205,413 to Bisdikian. Further, claims 19-22 and 30-33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bisdikian. Finally, claims 16 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bisdikian in view of U.S. Patent No. 6,321,264 to Fletcher et al. Applicant respectfully traverses these rejections for the following reasons.

In the Amendment filed October 24, 2003, Applicant submitted arguments as to why these claims are not disclosed or suggested by Bisdikian and Fletcher. For the sake of brevity, Applicant hereby incorporates these arguments herein by references and responds to the Examiner rebuttal arguments presented in numbered paragraph 6 of the Office Action (pages 7 and 8).

As Applicant has argued, and as the Examiner apparently appreciates from his rebuttal comments, the invention differs from the Bisdikian's system at least in that the invention involves "real" subscribers connecting the testing computers to the network, whereas Bisdikian's testing computers are "virtual subscribers" designed "to emulate the actual traffic of real subscribers" (see col. 4, lines 3-4). Nevertheless, the Examiner still concludes that the claims are not patentably distinguishable from Bisdikian. However, there are a number of key errors in the analysis contained in Examiner's rebuttal arguments.

First, there appears to be some confusion about the use and meaning of the term "test server" in Bisdikian. All of independent claims 16, 24 and 27 recite an "experience test server." Claim 24

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and 27 more particularly require the experience test server to distribute instructions to the user devices perform network tests and to collect network performance data generated by the user devices, while claim 16 requires the experience test server to collect user experience data. The claimed experience test server should not be confused with the "test servers" described by Bisdikian and shown in Fig. 3 of Bisdikian. Bisdikian's test servers represent servers of service providers that are contacted by the virtual subscribers to test network performance. In fact, Bisdikian identifies the test servers as "service providers 22" at col. 4, line 56. The role of Bisdikian's "test servers" is merely to respond to the requests made by Bisdikian's virtual subscribers in order to test network response time, etc. Unlike the claimed experience test server that distributes test instructions and collects test data, plainly Bisdikian's "test servers" do not distribute test instructions to the virtual subscribers or collect test data from the virtual subscribers. Rather, Bisdikian's testing scheme is controlled from a web browser 24 that accesses the virtual subscribers via a web server 25 and collects test results (see Fig. 4). Thus, notwithstanding the unfortunate similarity in terminology, it cannot reasonably be argued that there is any correspondence between the claimed "experience test server" and Bisdikian's "test servers."

Second, as Applicant has pointed out, one of the fundamental differences between performing tests using user devices belonging to customers and performing tests using virtual subscribers dedicated solely for that purpose is that the testing system of the invention can never know in advance when and for how long a particular user device will be connected and available for testing, whereas a testing-dedicated "virtual subscriber" is presumably always available for testing. Consequently, unlike in Bisdikian, it is necessary in the present invention to initiate the testing process by having the user device notify the experience test server of its availability to perform tests (independent claims 24 and 27 require this notification; claim 16 similarly requires detecting and monitoring a connection code).

In his rebuttal arguments, the Examiner disagrees, arguing that Bisdikian's virtual subscribers "must notify the test servers of their existence and willingness to perform tests," citing col. 5, lines 12-55 of Bisdikian. Applicant respectfully submits that the Examiner's statement is incorrect. If the

Examiner is referring Bisdikian's "test servers" shown in Fig. 3, then the Examiner's statement is incorrect because the Bisdikian's "test servers" do not in any way correspond to the claimed "experience test server," as explained above. If the Examiner is arguing that, like the claimed invention, Bisdikian's virtual subscribers need to notify web server 40 of their availability to perform tests, then the Examiner's statement is incorrect because that is not what Bisdikian teaches. The portion of col. 5 cited by the Examiner in support of his argument describes the exchange of commands and data shown in Fig. 4 of Bisdikian. As clearly seen in Bisdikian's Fig. 4, the test parameters entered by the technician via the web browser are sent to the web server, and the web server simply passes the test parameters to the virtual subscriber. The virtual subscriber then performs the requested tests with various file servers and reports the test results back to the web server. Thus, Bisdikian teaches that the virtual subscriber sends only test results to the controlling web server. Bisdikian does not disclose or suggest that the virtual subscriber notifies the web server that it is available to perform tests in response to being connected to the network, as required by claims 24 and 27. Nor does Bisdikian's web browser 40 detect and monitor a connection code from the virtual subscriber as required by claim 16. There is simply no disclosure of such a notification in Bisdikian and it is notably absent from Fig. 4. The only signals sent from Bisdikian's virtual subscriber to the controlling web server are the test results. Moreover, given that the virtual subscriber's sole purpose is to perform such tests, one would not expect Bisdikian's virtual subscribers to notify the web server of the fact that they are connected and available for testing. Bisdikian's disclosure assumes as a given that the virtual subscribers are connected and available for testing.

Third, with particular regard to claim 16, Applicant previously argued that Bisdikian does not disclose or suggest detecting that a user invokes a connection code to connect a client system to the distributed network and monitoring the connection code to obtain user experience data about the connection process in response to the user invoking the connection code, as required by claim 16, because Bisdikian's system employs virtual subscribers rather than "real" subscribers to perform network tests and collect data related to network performance.

In response, the Examiner now argues that Bisdikian does indeed suggest detecting and monitoring a connection code invoked by a user, since individuals such as system managers ultimately perform the tests in Bisdikian, and these individuals set up and run the tests and "initiate the connection code." As a preliminary matter, Applicant can find no mention in Bisdikian of individuals initiating connection codes, as argued by the Examiner.

Ironically, however, the Examiner's argument on this point directly exposes a key difference between Bisdikian and the claimed invention that Applicant has been trying to explain to the Examiner. Specifically, the "individuals" mentioned by the Examiner (which Bisdikian calls "technicians") are indeed setting up and running the tests in Bisdikian, as the Examiner correctly points out. However, Bisdikian discloses that these technicians access the virtual subscribers via a web browser and web server in order to pass tests parameters to the virtual subscribers (see col. 5, lines 11-63; Fig. 4). Thus, if Bisdikian's technicians are indeed initiating connection codes, as the Examiner argues, then these connection codes are being sent from Bisdikian's controlling web server 25 to the virtual subscribers 21. Applicant is claiming the exact opposite. Specifically, claim 16 requires detecting that a user invokes a connection code to connect a client system to the distributed network. In other words, the claimed connection code originates from the client system (which the Examiner equates with Bisdikian's virtual subscriber) and is sent to the experience test server. The fact that the claimed arrangement is the exact opposite of Bisdikian is what one would expect, since Bisdikian need not worry whether the virtual subscribers are connected. Thus, Bisdikian's testing process is initiated by technicians at a central controller (i.e., web browser 24/web server 25) that contacts the virtual subscribers. Since the connection status of the testing device in Applicant's system can change at any moment and is not controlled by the testing system, the testing system must be notified by the testing device that the testing device is connected to the network before the testing system can instruct the testing device of what tests to run. This claimed notification is the opposite of what the Examiner argues Bisdikian discloses.

In summary, for the reasons explained in the previous Amendment and above, Bisdikian does not anticipate or render obvious Applicant's claims, and no combination of Bisdikian and Fletcher
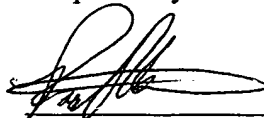
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renders obvious Applicant's claims. Accordingly, the Examiner is respectfully requested to reconsider and withdraw these rejections.

Applicant has added two new dependent claims 34 (34/24) and 35 (35/27) which require that the user devices be connected to the distributed network under control of users who are customers of a provider of the network-based services. Support for the claimed subject matter is found throughout Applicant's specification (e.g., see pages 21 and 22). This limitation is plainly contrary to Bisdikian's scheme as explained above; thus these claims also should be patentable over the art of record.

In view of the foregoing, Applicant respectfully requests the Examiner to find the application to be in condition for allowance with claims 1-3, 5-9, 16, 17, 19-35. However, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney to discuss any unresolved issues and to expedite the disposition of the application.

Filed concurrently herewith is a Petition for an Extension of Time with payment of the small entity fee for a three-month extension of time, together with an excess claim fee for one claim in excess of the twenty-six previously paid for. Also filed concurrently herewith is a Notice of Appeal, together with the requisite fee. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee for such extension is to be charged to Deposit Account No. 05-0460.

Respectfully submitted,

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